FILE COPY

Supreme Court of the United States

October Term, 1960

Supreme Court, U.S.
FILED
SEP 12 1960
JAMES R. BROWNING, Clerk

No. 172

HAROLD D. CRAMER and
VIOLA B. CRAMER, His Wife,
Petitioners,

v.

E. ROMLE ROMINE and MARIAN S. ROMINE, His Wife; LEROY COLLINS, Governor; RAY E. GREEN, Comptroller; J. EDWIN LARSON, Treasurer; RICHARD W. ERVIN, Attorney General, and LEE THOMPSON, Commissioner of Agriculture, as Trustees of the Internal Improvement Fund of the State of Florida,
Respondents.

On Petition for Writ of Certiorari to the District Court Of Appeal of Florida, Third District

BRIEF FOR THE RESPONDENTS IN OPPOSITION

RICHARD W. ERVIN
Attorney General of Florida
Capitol Building
Tallahassee, Florida

CHARLES VOCELLE
Special Assistant Attorney General

RALPH E. CUNNINGHAM, JR.

JOHN L. NORRIS

THOMAS EUGENE LEE, JR.
Attorneys for Respondents

TOPICAL INDEX TO BRIEF

	Page
JURISDICTION	1
QUESTIONS PRESENTED	2
STATEMENT	3
ARGUMENT	4
PETITIONERS' QUESTION 1	4
PETITIONERS' QUESTION 2	7
THE INTEREST OF THE RESPONDENTS TRUSTEES	11
CONCLUSION	12

TABLE OF CITATIONS

CASES

	Page
Dan Durley v. Nathan Mayo, 351 U. S. 277, 100 L. Ed. 1178, 78 S. Ct. 806	10
Hayes v. Bowman, Fla. 1957, 91 So. 2d 795	9
Langley v. Irons Land & Development Co., 94 Fla. 1010, 114 So. 769 (text p. 771)	9
Thompson v. City of Louisville, U. S. 80, S. Ct. 624, 4 L. Ed. 2d 654	4
U. S. v. San Jacinto Tin Co., 125 U. S. 247, 31 L. Ed. 747	5, 11

Supreme Court of the United States

October Term, 1960

No. 172

HAROLD D. CRAMER and
VIOLA B. CRAMER, His Wife,

Petitioners,

v.

E. ROMLE ROMINE and MARIAN S. ROMINE, His Wife; LEROY COLLINS, Governor; RAY E. GREEN, Comptroller; J. EDWIN LARSON, Treasurer; RICHARD W. ERVIN, Attorney General, and LEE THOMPSON, Commissioner of Agriculture, as Trustees of the Internal Improvement Fund of the State of Florida,

Respondents.

On Petition for Writ of Certiorari to the District Court Of Appeal of Florida, Third District

BRIEF FOR THE RESPONDENTS IN OPPOSITION

To The Supreme Court of The United States:

JURISDICTION

(1)

(b) The Petitioners invoke the jurisdiction of

this Court on the grounds that the final decree and its affirmance are devoid of support in the record, and that said decisions are contrary to the applicable decisions of this Court. Further, that the jurisdiction to review said decree and its affirmance by Writ of Certiorari is conferred upon this Court by Section 1257, Title 28, USCA.

The Petitioners have not shown that a State Court of Florida has decided a Federal question of substance not heretofore determined by this Court, or that a State Court of Florida has decided such a question in a way probably not in accord with applicable decisions of this Court.

In this case it affirmatively appears from the record that a decision of the Federal question was NOT necessary to the determination of the cause by the Florida Court, and that the determination of the cause rightfully rested upon adequate independent State grounds.

QUESTIONS PRESENTED

(d). The questions which the Petitioners present for review are:

1. IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

2. ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

STATEMENT

The facts as found by the Trial Court (R1. 22, 25) may be summarized as follows:

1. The Petitioners and the Respondents Romines are the owners of upland property in the Bay of Florida in Monroe County, Florida. The Cramers' property is near, but not adjacent to the Romines' property. The Bay of Florida is a bay of the sea (R1. 22).

2. The Petitioners applied to the Respondents Trustees of the Internal Improvement Fund of the State of Florida for a grant of submerged land alleged to be immediately adjacent to the uplands of the Petitioners. As a part of said application, the Petitioners supplied the said Trustees with a meager surveyor's sketch or drawing depicting the Petitioners' upland property. The said sketch did not present the whole picture of the rights of other upland owners in the vicinity, including the Romines. The Petitioners failed to show in said sketch the property of the Respondents Romines, and failed to show that the grant of such lands might infringe on the riparian rights of the said Respondents and others not parties to this suit (R1. 22, 23).

3. The Trustees, relying on the representations made to them by the Petitioners, made a grant of submerged land to the Petitioners (R1. 23).

4. The Petitioners disclosed to the Trustees only information between their property and the water, and did not supply any information on any other property which faced the same body of water (R1. 23).

5. The Petitioners made an application to the Trustees without making full disclosures, and the Trustees, relying upon the application, executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland property owned by the Romines and others (R. 23).

ARGUMENT

PETITIONERS' QUESTION No. 1

IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

There is support in and by the record for the final decree. The question is not one of the sufficiency of the evidence, but whether the decree is supported by evidence.

In the case of **Thompson** v. **City of Louisville**, U. S. 80 S. Ct. 624, 4 L. Ed. 2d 654, this Court stated in part:

> "* * * The ultimate question presented to us is whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment. Decision of this question turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all."

The Petitioners rely upon the case of **U. S. v. San Jacinto Tin Co.**, 125 U. S. 247, 31 L. Ed. 747. In that case what was urged as satisfactory evidence of a fraud was really little but suspicion, fierce denunciation and a bitter use of such words as "fraud", "deceit" and "imposition".

Turning to the record to show support thereby for the final decree we find clear and convincing evidence in the record to support the decree as follows:

1. The Respondents Trustees required the Petitioners to furnish a survey by a registered surveyor, and to advise the Respondents Trustees of all pertinent facts relating to the applicants' right to purchase and to assist the Trustees in allocating to the applicants and to other adjacent owners their rightful portion of the submerged bottom lands (R1. 68). The Petitioners were required to furnish a survey and plat prepared by a registered engineer, giving an accurate description of the land applied for, said description to be tied into an established government corner (R1. 44, 45).

2. The Petitioners instructed their surveyor to show roughly 700 feet out by the width of their property, with the end in view of applying for bay bottom, which is what the surveyor did, the surveyor feeling that the same would not be " . . . unethical or unprofessional . . . " (R1. 44, 45).

3. The Petitioners thereby submitted to the Respondents Trustees a meager sketch (Pl. Ex. 6; R1. 43, 78), which said sketch bore a certificate which stated in part that it was certified, " . . . that there are no encroachments . . . except as shown." The Petitioners misrepresented the true facts inasmuch as there was an encroach-

ment upon the riparian rights of the Respondents Romines and others (Def. Ex. 1; R1. 63, 88). The application of the Petitioners failed to show that such a grant to them would cut off and close the right of ingress and egress of a cove in existence between their uplands and the uplands of the Romines (Def. Ex. 1; R1. 62, 63, 88).

4. From the meager surveyor's sketch (Pl. Ex. 6; R1. 41, 42, 43, 44, 78), submitted by the Petitioners to the Respondents Trustees, it was made to appear that Petitioners' subdivision, that is, Vaca Village Subdivision, was the only subdivision in the area. The upland property of the Respondents Romines is in a subdivision other than Vaca Village Subdivision and, in fact, is removed therefrom by an intervening subdivision (Def. Ex. 1; R1. 63, 88).

5. The grant from the Respondents Trustees to the Petitioners contained a portion of two (2) small islands (Def. Ex. 1; R1. 63, 88). The act of the Petitioners was so misleading that the grant from the Respondents Trustees included a portion of these two (2) small islands which were owned by the United States (Def. Ex. 8; R1. 64, 97).

6. Florida has a general coastline of 1,197 miles. Florida's detailed tidal shoreline (including bays, sounds and other bodies) measures 8,426 statute miles (R1. 53).

7. In the late summer of 1951 (R1. 65) when Petitioners sought to acquire the grant from the Trustees, the Trustees did not have a complete set of maps in Tallahassee (R1. 593). There had to be a reliance upon the applicant for assistance in allocating rightful portions of submerged bottom lands (R1. 58) and to make equitable

fair divisions of the bottom lands which would preserve navigability and access rights and riparian rights of all affected and concerned (R1. 61).

8. The land involved in this litigation is submerged land and has never been filled. No improvements have been made to this bay bottom (R1. 68). The house on the upland belonging to the Petitioners was started before they acquired the grant in question (R1. 68, 69).

9. Subsequent to the application of the Petitioners, the Respondents Romines made an application to the Respondents Trustees for a grant of submerged land adjacent to their upland (Pl Ex. 1; R1. 33, 72). The grant was made, but not recorded. The grant to the Petitioners and to the Respondents Romines was in conflict (R1. 57).

It is evident that the Respondents Trustees relied to their detriment on the act of the Petitioners in furnishing the said Trustees the meager sketch for the stated purpose of obtaining the land grant.

The final decree is not devoid of support by the record. The testimony and evidence upon which the grant was set aside is clear, univocal and convincing.

PETITIONERS' QUESTION No. 2

ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

The judgments sought to be reviewed are not contrary to applicable decisions of this Court. It was not

necessary for the Florida Courts to decide a Federal question. The judgments of the Florida Courts were based upon applicable Florida law.

We would re-state the Petitioners' second question as follows:

> WHERE, THROUGH MISREPRESENTATION, WITHOUT MAKING FULL DISCLOSURE, PETITIONERS OBTAINED A GRANT FROM RESPONDENTS TRUSTEES, WHICH INCLUDED GOVERNMENT LAND AND RIPARIAN RIGHTS OF OTHERS AND WHICH DID NOT EQUITABLY DISTRIBUTE SUBMERGED LANDS BETWEEN UPLAND OWNERS AND CHANNEL, AND
>
> WHERE THE FLORIDA TRIAL COURT SET ASIDE THE GRANT AND ALLOWED REAPPLICATION FOR A GRANT OF SUBMERGED LANDS WHICH WOULD PRESERVE RIPARIAN RIGHTS OF UPLAND OWNERS AS NEAR AS PRACTICABLE AND ALLOW EQUITABLE DISTRIBUTION,
>
> ARE THE JUDGMENTS OF THE FLORIDA COURTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

We answer the question in the negative.

In the case at bar there was a material misrepresentation on the part of the Petitioners (R1. 44, 45) (Def

Ex. 1; R1. 62. 63, 88) in obtaining the grant from the Respondents Trustees.

In **Langley** v. **Irons Land & Development Co.**, 94 Fla. 1010, 114 So. 769 (text p. 771), the Supreme Court of Florida quoted 9 Corpus Juris, 1169, Sec. 23:

> "'**Innocent misrepresentation of fact.** According to the weight of authority, misrepresentation of material facts, although innocently made, if acted on by the other party to his detriment, will constitute a sufficient ground for rescission and cancellation in equity. The real inquiry is not whether the party making the representation knew it to be false, but whether the other party believed it to be true and was misled by it in making the contract; and, whether the misrepresentation is made innocently or knowingly, the effect is the same. It is as conclusive a ground of relief in equity as a willful and false assertion, for it operates as a surprise and imposition on the other party, and in such case the party must be held to his representations.'"

In setting the grant aside (R1. 22, 25), the Trial Court based its decision upon applicable Florida law. The order (R2. 2) of The District Court of Appeal of Florida, Third District, which affirmed the Trial Court was founded upon independent Florida grounds. See **Hayes** v. **Bowman**, Fla. 1957, 91 So. 2d 795.

In the case of **Hayes** v. **Bowman**, supra, the Supreme Court of Florida stated in part (text p. 801, par. 6, 7):

"We are therefore of the view and must hold that the common law riparian rights to an unobstructed view and access to the Channel over the foreshore across the waters toward the Channel must be recognized over an area as near 'as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. This rule means that each case necessarily must turn on the factual circumstances there presented and no geometric theorem can be formulated to govern all cases. An upland owner must in all cases be permitted a direct, unobstructed view of the Channel and as well a direct, unobstructed means of ingress and egress over the foreshore and tidal waters to the Channel. If the exercise of these rights is prevented, the upland owner is entitled to relief."

(Text page 802, para. 10):

"We therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area 'as near as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such 'equitable distribution' the Court necessarily must give due consideration to the lay of the upland shore line, the direction of the Channel and the corelative rights of adjoining upland owners."

In the case of **Dan Purley** v. **Nathan Mayo**, 351 U. S

277, 100 L. Ed. 1178, 78 S. Ct. 806, this Court stated in part:

> "It is a well established principle of this Court that before we will review a decision of a state court, it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. **Honeyman** v. **Hanan**, 300 U. S. 14, 18; **Lynch** v. **New York**, 293 U. S. 32."

The Interest of the Respondents Trustees

1. The Petitioners argue that the one purpose of this suit (Rl. 1-11) was to regain this sovereignty land from the Petitioners in order to grant it to the Respondents Romines. The Petitioners rely in part on **U. S.** v. **San Jacinto Tin Co.**, that when it is apparent that the only purpose of bringing the suit is to benefit one of two claimants to the land, and the Government has no interest in the matter, the suit must fail.

2. In the final decree of the Trial Court (Rl. 22, 25) the grant in question was cancelled, but it was ordered that the Petitioners Cramers and the Respondents Romines may re-apply to the Respondents Trustees for a grant of the submerged lands, and that the Respondents Trustees

> "... shall preserve the riparian rights of the upland owners as near as practical so as to equitably distribute the submerged lands between all interested upland owners." (Rl. 24, 25).

CONCLUSION

The record clearly shows that: the final decree is supported by the record; the final decree and the judgment affirming it do not violate petitioners' rights afforded by the Fourteenth Amendment; the judgments sought to be reviewed are not contrary to applicable decisions of this Court; the decision and judgment of the courts of Florida are based upon applicable Florida law and are not in conflict or contrary to any decisions of this Court.

On the grounds disclosed in this Brief of Respondents, this cause should not be reviewed by this Court.

WHEREFORE, the Respondents pray that this Court will refuse to grant a writ of certiorari.

Respectfully submitted.

RICHARD W. ERVIN
Attorney General of Florida
Capitol Building
Tallahassee, Florida

CHARLES VOCELLE
Special Assistant Attorney General

RALPH E. CUNNINGHAM, JR.

JOHN E. NORRIS

THOMAS EUGENE LEE, JR.
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, in compliance with Paragraph 1, Rule 33 of the Revised Rules of the Supreme Court of the United States, a copy of the foregoing Brief for the Respondents was served upon the HONORABLE JOHN G. SIMMS, counsel of record for the Petitioners, by depositing said copy in a United States mail box, with first class postage prepaid, addressed to said counsel of record at his post office address, Route 2, Box 240, Homestead, Florida, this 10th day of September, 1960.

Richard W. Ervin

RICHARD W. ERVIN